

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

ALICIA DURIS,) Case No.:
)
Plaintiff,)
v.) Hon.
)
CAPITAL ONE BANK, N.A.,)
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Defendant.)
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)
)

COMPLAINT

NOW COMES Plaintiff, ALICIA DURIS (“Plaintiff”), through her attorneys, and hereby alleges the following against Defendant, CAPITAL ONE BANK, N.A. (“Defendant”):

INTRODUCTION

1. Plaintiff brings this action on behalf of herself individually seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendant, in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection Act (hereinafter “TCPA”), 47 U.S.C. § 227 *et seq.*

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47 U.S.C. §227(b)(3). See, *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740 (2012), holding that federal and state courts have concurrent jurisdiction over private suits arising under the TCPA.
3. Venue is proper in the United States District Court for the Northern District of Ohio pursuant to 28 U.S.C § 1391(b) because Plaintiff resides within this District and a

1 substantial part of the events or omissions giving rise to the herein claims occurred, or a
2 substantial part of property that is the subject of the action is situated within this District.

3 **PARTIES**

- 4 4. Plaintiff is a natural person residing in the Ashtabula County, in the city of Conneaut,
5 Ohio.
- 6 5. Defendant is a corporation doing business in the State of Ohio, and is a Virginia
7 corporation with its principal place of business located in McLean, Virginia.
- 8 6. At all times relevant to this Complaint, Defendant has acted through its agents
9 employees, officers, members, directors, heir, successors, assigns, principals, trustees,
10 sureties, subrogees, representatives and insurers.

11 **FACTUAL ALLEGATIONS**

- 12 7. Defendant is a “person” as defined by 47 U.S.C. § 153 (10).
- 13 8. Defendant placed collection calls to Plaintiff seeking and attempting to collect on alleged
14 debts incurred through purchases made on credit issued by Defendant.
- 15 9. Defendant placed collection calls to Plaintiff’s cellular telephone at phone number (440)
16 228-86XX.
- 17 10. Defendant placed collection calls to Plaintiff from phone numbers including, but not
18 limited to (855) 620-2825, (800) 955-6600 and (855) 620-2825.
- 19 11. Per its prior business practices, Defendant’s calls were placed with an automated
20 telephone dialing system (“auto-dialer”).
- 21 12. Defendant used an “automatic telephone dialing system”, as defined by 47 U.S.C. §
22 227(a) (1) to place its telephone calls to Plaintiff seeking to collect a consumer debt
23 allegedly owed by Plaintiff, ALICIA DURIS.
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1 13. Defendant's calls constituted calls that were not for emergency purposes as defined by
2 47 U.S.C. § 227(b)(1)(A).

3 14. Defendant's calls were placed to a telephone number assigned to a cellular telephone
4 service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. §
5 227(b)(1).

6 15. Defendant never received Plaintiff's "prior express consent" to receive calls using an
7 automatic telephone dialing system or an artificial or prerecorded voice on her cellular
8 telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

9 16. On or about October 25, 2016, at or about 12:08 p.m. Pacific Standard Time, the
10 Plaintiff called into Defendant's company at phone number (855) 620-2825 and spoke
11 with Defendant's female representative ("Mary") and requested that Defendant cease
12 calling Plaintiff's cellular phone.

13 17. During the conversation on October 25, 2016, Plaintiff gave Defendant both her phone
14 number and social security number to assist Defendant in accessing her account before
15 asking Defendant to stop calling her cell phone.

16 18. Plaintiff revoked any consent, explicit, implied, or otherwise, to call her cellular
17 telephone and/or to receive Defendant's calls using an automatic telephone dialing
18 system in her conversation with Defendant's representative on October 25, 2016.

19 19. Despite Plaintiff's request to cease, Defendant placed another collection two (2) calls to
20 Plaintiff on October 26, 2016.

21 20. Defendant continued to place collection calls to Plaintiff through March 24, 2017.
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1 21. Despite Plaintiff's request that Defendant cease placing automated collection calls,
2 Defendant placed at least one hundred and fifty-five (155) automated calls to Plaintiff's
3 cell phone.

4 **FIRST CAUSE OF ACTION**
5 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**
6 **47 U.S.C. § 227**

7 22. Plaintiff repeats and incorporates by reference into this cause of action the allegations set
8 forth above at Paragraphs 1-21.

9 23. The foregoing acts and omissions of Defendant constitute numerous and multiple
10 negligent violations of the TCPA, including but not limited to each and every one of the
11 above cited provisions of 47 U.S.C. § 227 et seq.

12 24. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff is
13 entitled to an award of \$500.00 in statutory damages, for each and every violation,
14 pursuant to 47 U.S.C. § 227(b)(3)(B).

15 25. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

16 **SECOND CAUSE OF ACTION**
17 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER**
18 **PROTECTION ACT**
19 **47 U.S.C. § 227 et. seq.**

20 26. Plaintiff repeats and incorporates by reference into this cause of action the allegations set
21 forth above at Paragraphs 1-25.

22 27. The foregoing acts and omissions of Defendant constitute numerous and multiple
23 knowing and/or willful violations of the TCPA, including but not limited to each and
24 every one of the above cited provisions of 47 U.S.C. § 227 et seq.

1 28. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq.,
2 Plaintiff is entitled an award of \$1,500.00 in statutory damages, for each and every
3 violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

4 29. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff, ALICIA DURIS, respectfully requests judgment be entered
7 against Defendant, CAPITAL ONE FINANCIAL, CORP., for the following:

8 **FIRST CAUSE OF ACTION**

9 30. For statutory damages of \$500.00 multiplied by the number of negligent violations of the
10 TCPA alleged herein (155); \$77,500.00;

11 31. Actual damages and compensatory damages according to proof at time of trial;

12 **SECOND CAUSE OF ACTION**

13 32. For statutory damages of \$1,500.00 multiplied by the number of knowing and/or willful
14 violations of TCPA alleged herein (155); \$232,500.00;

15 33. Actual damages and compensatory damages according to proof at time of trial;

16 **ON ALL CAUSES OF ACTION**

17 34. Actual damages and compensatory damages according to proof at time of trial;

18 35. Costs and reasonable attorneys' fees;

19 36. Any other relief that this Honorable Court deems appropriate.

20 **JURY TRIAL DEMAND**

21 37. Plaintiff demands a jury trial on all issues so triable.
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1 RESPECTFULLY SUBMITTED,

2 DATED: May 18, 2017

3 **COZMYK LAW OFFICES, LLC**

4 By: /s/ Peter Cozmyk

5 PETER COZMYK (0078862)

6 *Attorney for Plaintiff*

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